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CONCORD, N.H.

Honorable C. Murray Sawyer,  
Clerk of the Concord Delegation,  
House of Representatives  
Concord, New Hampshire

Dear Sir:

You have inquired regarding the constitutionality of an amendment to House Bill No. 452 establishing a procedure for amending the charter of the City of Concord upon petition of three per cent of the qualified voters of the City to the Mayor and City Council for a special meeting to vote upon an amendment to the City Charter. The proposed amendment to House Bill No. 452 in terms would authorize the voters of Concord, without prior legislative sanction, to amend the City Charter so as to provide a new form of government by abolition of the City Manager form or by adoption of other appropriate amendments.

The proposed procedure for accomplishing substantial amendments to a city charter is novel and without precedent in the history of municipal government in New Hampshire. Substantial precedent, however, militates against the principle and rationale of the proposed bill, namely, to amend a charter without the prior legislative approval of the General Court. Accordingly, it is my opinion that the proposed amendment to House Bill No. 452 would be an unconstitutional delegation of legislative power to a municipality.

Public policy in this state reflected in the decisions of its courts vests the control of local governments in the Legislature. There is no fundamental doctrine establishing a right of local self-government in New Hampshire.

"The entire trend and philosophy of our decisions is in denial of the right, and the question can hardly be regarded as unsettled." Amyot v. Caron, 88 N.H. 398.

While the Legislature has power to delegate a right of local self-government, the Legislature cannot abrogate its power to make laws by delegating to a municipality without restraint the power to legislate.

"The principle of local government authorizes grants of limited powers of local legislation to towns.

C O P Y

OFFICE OF ATTORNEY-GENERAL

Honorable C. Murray Sawyer

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but the power of general state legislation cannot be delegated by the senate and house in whom the constitution vests it." Willowick, Assez. v. Haldenborg, 62 N.H. 327, 328. See also Attorney General v. Shepard, 62 N.H. 323, 324; Art. 5, Part Second, Constitution of New Hampshire.

A basic distinction should be recognized between making a general law contingent upon a local vote and authorizing a municipality by local vote to enact a general law. It is constitutional to make the operation of a general law dependent upon the vote of an affected municipality. State v. Jones, 50 N.H. 253, 252-253. But it is unconstitutional to authorize a municipality to enact a general law within the province of the legislature. Opinion of the Justices, 79 N.H. 617, 620.

Very truly yours,

Gordon H. Tiffany  
Attorney General

JHM:IP